

MINUTES
REGULAR CITY COUNCIL MEETING
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA
CITY COUNCIL CHAMBERS, YUMA CITY HALL
ONE CITY PLAZA, YUMA, ARIZONA
DECEMBER 2, 2009
5:30 p.m.

CALL TO ORDER

Mayor Nelson called the City Council meeting to order.

INVOCATION/PLEDGE

Glenn Connell, Pastor of Valley Baptist Church, gave the invocation. **Donnamarie Dibley**, Water Electronics Technician, led the City Council in the pledge of allegiance.

ROLL CALL

Councilmembers Present: Shoop, Mendoza, Beeson, McClendon, Nicholls, Johnson and Mayor Nelson

Councilmembers Absent: none

Staffmembers Present: City Administrator, Mark Watson
Deputy City Administrator, Bob Stull
Director of Parks and Recreation, Becky Chavez
City Attorney, Steven W. Moore
Various Department Heads or their representative
City Clerk, Brigitta M. Kuiper

FINAL CALL

Mayor Nelson made a final call for the submission of Speaker Request Forms from members of the audience.

Mayor Nelson changed the agenda order at this point in the meeting, moving two ordinances from the Ordinances Consent Agenda, as follows:

Motion (McClendon/Nicholls): To withdraw Ordinance O2009-64: Annexation A2009-03 Avenue 9 ½ E and 32nd Street and Ordinance O2009-67: Annexation A2009-13 East Mesa at Avenue 9E from the agenda.

Mayor Nelson noted that once an ordinance is withdrawn from the agenda, it is only brought back by staff with substantially different data.

Voice vote: **approved** 7-0.

PRESENTATIONS

- **Watson** announced that the new Valley Aquatics Center appeared in a national and an international magazine. He recognized the Parks & Recreation staff for their efforts.
 - **Chavez** stated the Valley Aquatics Center is a partnership between the City of Yuma and Yuma Union High School District; it is because of the partnership and the focus on community needs that the Parks and Recreation Department is able to be successful.
- **Watson** recognized the Agua Viva Water Plant for receiving the American Council of Engineering Companies Arizona Grand Award for Engineering Excellence.

- **Watson** recognized the accounting staff for receiving the Governmental Finance Officers Association Award for accounting. This is the twenty-sixth year they have met all accreditation standards for financial management.

COMMUNICATIONS / FACTUAL RESPONSES

Watson stated that DPE Construction, a local contractor, was awarded the bid for the Deyo Complex Tennis Court Rehabilitation project. This item will appear before City Council on the January 6, 2010 agenda.

Also, an article published in *The Sun* recently stirred some confusion throughout the City stating the City would be in a \$5 million shortfall by 2010. The correct year should have been 2011 which is based on current trends. *The Sun* will be making a retraction.

Mayor Nelson clarified that the items pulled from the agenda were Annexation A2009-03, also known as Del Sur and Annexation A2009-13, also known as Trail Estates, which will not be reconsidered in the near future. **Watson** stated that if the annexations were to come forward again, the process would need to restart beginning with consultation of the residents. The upcoming United States Census created urgency to complete annexations where previous permissions were received.

I. CALL TO THE PUBLIC

Diane Ewing, 9383 E. Corral Street, expressed her concerns regarding water service provided to residents of Del Sur.

Cynthia Fredrick, 11379 S. Adams Avenue, thanked the City Council for withdrawing the annexations and allowing the residents to remain in the county.

Monica DeLeon, 3602 Cooke Street, expressed her concerns regarding hate crimes escalating to the general public.

Harvey Campbell, 4155 E. County 13 ½ Street, representing CTW- the owners of two parcels at 278 S. Main Street, requested that the purchase of small piece of property from the City be placed on an upcoming agenda. The local engineer that was retained to begin these discussions has not been successful. **Watson** stated the property is basically unusable however an investigation will need to be conducted; he will report back to City Council.

Doug Hipp, 265 S. Main Street, 16285 S. Avenue 2¼E, stated the General Plan amendment for Estancia will wrap Medium Density Residential around his property [currently designated as Suburban Site Built-2 (SSB-2) for 2-acre minimum lots]. He noted his disappointment that the City Council approved this amendment although there was a unanimous decision of the Planning and Zoning Commission to recommend denial. Hipp stated the Bureau of Reclamation (BOR) is drawing a line out across the mesa where the Colorado River water ends just before Estancia. What are the City plans for water in the area. He urged consideration be given for the existing property owners in the area.

"Doc" P.A Birdick, 465 S. 2nd Avenue, expressed his concern for MCAS in light of the Estancia project. A referendum petition is being circulated so that the citizens of Yuma can have their say at the polls. **Watson**

stated that City staff has been involved in many discussions with MCAS Administration and they support the development; it will have no impact on the base.

Jay Lyon, 11322 Adams Avenue, stated that he is upset by the fact that the residents in Del Sur Estates had to hire an attorney to fight the annexation.

Susan Fuquay, 9474 E. Ranch Drive, expressed her disappointment that the residents in Del Sur Estates had to hire an attorney. The annexation put the City Clerk in a bad position when she signed the annexation petitions based on Durable Powers of Attorney that were invalid. She suggested the City take a different approach when it comes to the annexation of property.

Jack Guinn, 560 E. Palo Verde, stated information provided through a request for public records was not what they asked for. **Watson** clarified the information the Guinn's are referring to are cases that occurred in the 1990's. A review process will be needed to evaluate the situation.

Sharon Mertz, 3823 S. 18th Avenue, thanked the departing City Council members for all their efforts. She hopes the Local Preference resolution will become their legacy.

Jack Kretzer, 761 W. Queens Place, expressed concerns over the many unanswered questions surrounding the Estancia development. **Watson** stated that the infrastructure would be developed through a Community Facilities District. Property taxes generated from the residents in Estancia would help pay for improvements such as a small water plant, sewer plant and possibly a fire station and police substation. City residents outside Estancia would not have to bear the costs; the capital costs would be born by the subdivision.

Carolyn Knowlton, 11466 S. Shadow Avenue, expressed her frustration over recent City actions trying to annex Del Sur and Bonita Estates. She also expressed her disapproval of the general plan amendment for Estancia. She urged the City Council to start listening to the people.

II. MOTION CONSENT AGENDA

Motion (Mendoza/McClendon): To adopt the Motion Consent Agenda as recommended. Voice vote: **approved 7-0.**

A. Approval of minutes of the following City Council meetings:

Regular Worksession	October 6, 2009
Regular Council Meeting	October 21, 2009
Special Worksession	November 3, 2009
Regular Council Meeting	November 4, 2009

B. Approval of Staff Recommendations:

1. Executive Sessions may be held at the next regularly scheduled Special Worksession, Regular Worksession and City Council Meeting for personnel, legal, litigation and real estate matters pursuant to A.R.S. § 38-431.03 Section A (1), (3), (4), and (7). (Attny)

2. Approve a #6 Bar (Person Transfer/Interim Permit) Liquor License application submitted by Julie Ann Zapata, agent for Jack & Rosie's, 1551 W. 5th Street, Yuma, Arizona. (LL09-20) (Admin/Clerk)
3. Approve a #12 Restaurant (New License) Liquor License application submitted by Christine Adella Gapp, agent for Da Boyz Italian Cuisine, 284 S. Main Street, 1st floor, Yuma, Arizona. (LL09-21) (Admin/Clerk)
4. Authorize staff to negotiate and execute a one-year contract with the option to renew for four additional one-year periods, one year at a time, depending on the appropriation of funds and satisfactory performance, for Professional Property and Right-of-Way Acquisition Services on a Delivery Order Basis with the following firms:

1. O. R. Colan and Associates	Scottsdale, Arizona
2. Universal Field Services Inc	Phoenix, Arizona

(RFQ #2010000172) (Eng)
5. Authorize the City Administrator to execute an Intergovernmental Agreement with Yuma Union High School District #70 for joint facility use. (Parks & Recreation)
6. Authorize City staff to enter into an agreement with the Arizona Department of Homeland Security for reimbursement of funds expended for overtime and mileage, in the amount of \$616,000.00 for activities in support of Operation Stonegarden. (Police/Admin)
7. Authorize City staff to enter into an agreement with the Arizona Department of Homeland Security for reimbursement of funds expended for the purchase of equipment, in the amount of \$647,555.00, in support of Operation Stonegarden. (Police/Admin)
8. Authorize City staff to enter into an agreement with the Arizona Department of Homeland Security for reimbursement of funds expended for the purchase of supplemental equipment, in the amount of \$376,153.00, in support of Operation Stonegarden. (Police/Admin)

III. RESOLUTION CONSENT AGENDA

Motion (Shoop/Mendoza): To approve Resolution R2009-90.

Kuiper displayed the following title:

Resolution R2009-90

A resolution of the City Council of the City of Yuma, Arizona, authorizing the submission of an application for State Housing Funds and certifying that said application meets the community's housing and community development needs and the requirements of the State Housing Programs, and authorizing all actions necessary to implement and complete the activities outlined in said application

(Admin/EcDev)

Roll call vote: **adopted** 7-0.

Resolution Consent Agenda Items Pulled for Separate Consideration

RATIFICATION OF ACTION: Resolution R2009-88 Intergovernmental Agreement: Arizona Department of Transportation – Area Service Highway Ratify direction to the City Administrator to proceed with an amendment to the 1999 Intergovernmental agreement (IGA) with the Arizona Department of Transportation for the Area Service Highway (ASH) removing Section II.6 from the IGA which designates Araby Road (Avenue 6½E) as a State Route. (Admin)

Motion (Shoop/Beeson): To ratify the action of Resolution R2009-88.

Speakers

Jack Kretzer, 761 W. Queens Place, expressed concern over the confusion of the posting of Resolution R2009-88. Initially, the ASH was conceived to be a no-access highway to accommodate the traffic that would be importing goods to the United States from Mexico. The highway now connects to San Luis and has more cars on it than commercial trucks. There are no immediate manufacturers and there are less than 100 trucks crossing the border each day. Why is the City backing out now from an agreement that has been signed by several agencies?

Johnson stated in his term on the Planning and Zoning Commission, he helped develop the 1996 Joint Land Use Plan and the 1997 City's Major Roadways Plan along with the current Major Roadways Plan, each of which has shown alternate routes to connect the ASH. The subdivisions were built before the ASH agreement was signed. The ASH agreement refers to Araby Road as Avenue 6 ½ E. For 34 years, the sign has read Araby Road, never Avenue 6 ½ E. He has done all he can to represent the City of Yuma and hasn't changed his position since 1991 on the ASH.

Watson: The City of Yuma has done its best to follow the postings and requirements of open records law. The City found that the amended agenda, which included Resolution R2009-88, was unintentionally not posted on the bulletin board outside City Hall; however, it was posted on the City's website. With today's technology most people receive communications via email or fax and very few people review the boards outside City Hall. Rather than ignore the incident as if it didn't occur, staff brought back the item for ratification and discussion.

Kuiper displayed the following title:

Resolution R2009-88

A resolution of the City Council of the City of Yuma, Arizona, directing the City Administrator to proceed with an amendment to the 1999 Intergovernmental Agreement (IGA) with the Arizona Department of Transportation, and amendment thereto, for the Area Service Highway removing Section II. 6. which designates Araby Road (Avenue 6½ E) as a State Route and encouraging other local jurisdictions participating in the IGA to adopt similar resolutions to remove Section II. 6. from the IGA
(Admin)

Roll call vote: **adopted** 6-0-1; Nicholls abstaining due to a conflict of interest due to a business relationship.

Resolution R2009-89 Housing Authority of the City of Yuma Confirm and amend the powers of the Housing Authority of the City of Yuma (HACY) and repeal Resolution No. 1908. (Attny)

Motion (Shoop/McClendon): To approve Resolution R2009-89 as recommended.

Kuiper displayed the following title:

Resolution R2009-89

A resolution of the City Council of the City of Yuma, Arizona, confirming and amending the powers of the Housing Authority of the City of Yuma ("HACY") and repealing Resolution No. 1908
(Attny)

Roll call vote: **adopted** 6-0-1; Mendoza abstaining due to a conflict of interest as he is an employee of HACY.

IV. ADOPTION OF ORDINANCES CONSENT AGENDA

Motion (Shoop/McClendon): To adopt Ordinance O2009-68 as recommended.

Kuiper displayed the following title:

Ordinance O2009-68

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, rezoning certain property hereinbefore located in the Agriculture (AG) District to the Suburban Ranch (SR-2) District and amending the zoning map to conform thereto
(Rezoning of property at 1549 E. 72nd Street also known as 1685 E. County 16th Street) (DCD/Planning)

Roll call vote: **adopted** 7-0.

(Clerk's note: Ordinance O2009-64 and Ordinance O2009-67 were addressed earlier in the meeting.)

V. INTRODUCTION OF ORDINANCES

Johnson inquired where the City's impact fees go if not spent in the time allowed. Community Development Block Grants money goes back to the federal government, but the City's impact fee schedule is based upon a 10-year Capital Improvement Program (CIP) and the money collected can only be spent on that specific area. **Chavez** stated her understanding is there is a six year period from the time the money accrues to when it has to be spent.

Moore stated that when jurisdictions adopt impact fees they generally have to be used within a reasonable period of time. In the City's case there are a set number of years before it has to be spent. Moore will further review the ordinance and get back to City Council with an accurate answer.

Mendoza asked who would be responsible for future environmental liabilities of the property. **Moore** stated that the City is selling the property back to the original owner. The City has not done anything with the property so any contamination would be the liability of the property owner.

Beeson requested that City Council not allow the introduction without receiving answers to their questions. **Mayor Nelson** stated that with the introduction tonight, it gives City Council time to discuss the issue and get the answers they desire. If any changes are needed then the ordinance will be re-introduced and approval delayed.

Stull stated that staff would like the City Council to introduce the ordinance tonight at the land owners request. The buyer would like to close as soon as possible for tax purposes. **Stull** requested the City Council allow the introduction tonight, staff could provide answers to their questions and if no changes are necessary, the City can meet the buyers request to close before the end of the year.

Nicholls: If the ordinance is introduced tonight, would the City Council still have the option to delay the adoption, even if no changes are required? **Stull** stated the City Council has two options; the ordinance can be introduced tonight and adopted in two weeks, or the ordinance can be introduced tonight and delayed at the adoption if questions are not satisfactorily answered in the interim. The contract was negotiated between both parties and delays may change the outcome of the agreement.

Johnson questioned if the appropriate funding is being used for the purchase. Impact fees can be spent only on the categories in which it was collected. His concern lies in where the money is refunded and how long it can be held. It has been an assumption that since the City had a 10-year CIP as the basis of the impact fees, the money would be held for ten years. **Moore** recited Section 157-03, B.2. Restrictions on Appropriations from the Yuma City Code which states that the City has six years to spend the money after that time period expires; the current property owner could then apply for a refund of the development fees.

Motion (Beeson/Mendoza): To introduce Ordinance O2009-69, as recommended. Voice vote: **approved** 7-0.

Kuiper displayed the following title:

Ordinance O2009-69

An ordinance of the City Council of the City of Yuma, Arizona, declaring a certain parcel of real property, hereinafter described, surplus for use by the City and authorizing and directing that a certain parcel of real property, hereinafter described, be acquired by gift, exchange, purchase or by eminent domain, for the reason that such property is required to enhance and expand public arts and culture facilities and other public purposes as may be related thereto, and authorizing payment of all costs necessary for the exchange and acquisition of said parcel of real property
(Exchange and acquisition of real property; Yuma Art Center expansion) (Eng)

VI. PUBLIC HEARINGS –none

VII. LOCAL PREFERENCE IN AWARDING PUBLIC BIDS

Moore presented the following options available to City Council:

1. Change City Code to provide for local preference from \$2,500 to the formal bid limit.
 - Currently, the City Code allows the City Council to award local preference above the formal bid limit of \$50,000.

- Lowering the provision would allow staff to utilize local preference for the informal bid process between \$2,500 and \$50,000.
- 2. Change Ordinance O2090 without consulting Attorney General or Governor.
 - Ordinance O2090 was adopted into the Charter in 1982 at the recommendation of the Attorney General and Governor's Office
 - The ordinance was not to include architects, engineers or contractors pursuant to the Arizona Revised Statutes.
- 3. Change Ordinance O2090 only after consulting Attorney General or Governor.
- 4. Amend current Charter provisions on local preference.
- 5. Draft new Charter provision for local preference.
 - The earliest time for the item to be placed on the ballot would be the Spring Election.

McClendon: Can changing the City Code for local preference from \$2,500 to the formal bid limit be done immediately? **Moore** stated that there is no priority in the numbering however the first option is something staff can have prepared and ready for introduction by the next City Council meeting. **Mayor Nelson** asked Moore to elaborate on item 2: To change Ordinance O2090 without consulting the Attorney General or Governor. **Moore** stated that the City Council is free to amend or repeal ordinances. However, Ordinance O2090 was a commitment made by the City to the Attorney General and the Governor's Office for applying local preference. The City pledged to adopt the ordinance as law in order to get the Governor to sign the Charter provision. **Mayor Nelson** advised against the City Council amending the ordinance without consulting with the Attorney General and Governor's Office first.

Moore: There is no restriction on pursuing multiple alternatives. The City Council can work on changing the City Code section, amending or adding a new Charter provision and pursue discussions with the Attorney General's Office all at the same time. **Johnson** asked if the City Code could be changed to provide for local preference under \$2,500 to the formal bid limit. **Moore** stated yes; the change would allow for staff to utilize local preference in that price range.

Johnson stated that staff should do whatever is necessary to change the City Code to provide for local preference from \$2,500 to the formal bid limit, but he is opposed to repealing Ordinance O2090 without consulting the Attorney General or Governor. Johnson is concerned that this may be viewed as a betrayal of trust, considering the agreement made by the City in order to get the Charter amendment approved. If the current Governor has the same views as the previous, she may not support the change to provide for local preference.

Nicholls: The time the City takes to resolve this issue with the Governor may surpass the time needed to get the issue on the May ballot. If the City misses the May Election, the City could be waiting over a year to act on it. Part of the process is to hear the voice of the community and let the Governor know what the citizens of Yuma want - this is a valuable piece of information for Governor Brewer or any future governor.

Shoop asked if it is possible to look at an amendment to the City Code as a short term solution to a long term problem. When it comes to getting approval from the Attorney General or the Governor, it will take a year or so. There needs to be a quicker solution in discussing the pros/cons and addressing the dollar amounts in the City Code for local preference. **Moore** stated that this will not solve the problem, the problem has been created by the Charter and Ordinance O2090 in its exclusion of architects, engineers and contractors from applying local preference. The City Code section only applies to buying commodities over \$50,000, currently staff can apply local preference under \$50,000. By changing the Charter it will enable

the City to have more flexibility, but it will not change how the City is doing business with the professional community - that will have to be done with a provision to the Charter. **Shoop** clarified that the City Council will not be able to resolve the issue quickly, but hopes for approval by 2011.

Beeson agreed in the urgency to resolve the issue, but stated a Charter change shouldn't be rushed. If the ordinance or City Code can be changed now, that is what the City should be pursuing. **Mayor Nelson** stated that the Charter amendment can be simple and is voted on by the people. The City has a window of opportunity for an election in May; if the City waits until November it could drag out to the end of 2012.

Speakers

John W. Lines, 4349 W. 15th Place, President of Lines and Lundgreen Roofing and President of the Yuma Southwest Contractors Association, expressed his support of Local Preference; however, there are still issues that need to be worked through.

Harvey Campbell, 4155 E County 13½ Street, President of betteryuma.org, urged City Council to bring the local preference issue forward at the May Election. Campbell inquired what the City considers a local dealer and how consideration would be given to those contractors bordering the City limit boundaries. **Moore** stated that the Charter provision adopted in 1981 states the definition of local dealer is any dealer, person or firm within the City limits in the City of Yuma who has a valid City of Yuma Business License; this is the criteria that applies local preference. **Campbell** recommended that the City Council consider an amendment to the provision to include those in the outskirts of the City limits or in County islands within the City.

Johnson stated in the past, certain businesses didn't want to be annexed due to the disadvantage they would have against competitors. City Council worked out an arrangement to help those businesses by capping the City Sales tax at \$25,000 – similar accommodations should be made for local preference. If restrictions are not in place to restrict local preference to the City limits, it would put the local businesses at a disadvantage. Local businesses pay property tax, business licenses and City sales tax.

Campbell stated that when a County business works within the City limits the money goes directly into the community, via sales tax charged by the local company. If a compromise could be reached, the City would benefit by obtaining sales tax from the county businesses. **Johnson** stated that those businesses adjacent to the City limits have the option of annexing into the City which would put them in an equal advantage. Possibly a mutual agreement clause can be added for businesses located in San Luis, if San Luis reciprocated and provided local preference to Yuma area contractors. **Campbell** agreed with the concept and questioned why the formal bid limit is \$50,000. Why are the local engineers, contractors and architects excluded under the ordinance?

Moore stated commodity items above \$50,000 require the City Council's approval. The City Code states that City Council can award local preference at its discretion. The change will not benefit the architects, engineers or contractors until the Charter provision is changed to remove the ordinance or the Charter is rewritten and approved by the Attorney General and signed by the Governor.

Ken Rosevear, Executive Director of the Yuma County Chamber of Commerce, 180 W. 1st Street, stated that unemployment numbers are going up and there are virtually no commercial projects planned for 2010. Businesses have laid people off and are running on minimal crews. The City should pursue the option of

changing Ordinance O2090 after consulting with the Attorney General and the Governor. Let the voters speak their mind at the election. He urged City Council to finalize local preference as soon as possible. **Nicholls** asked about the workforce reduction in the construction industry. **Rosevear** stated that construction makes up 30% of the total unemployment.

Johnson: State law requires municipal organizations to have a request for qualifications when professional services are sought. These contracts can not be awarded based on cost, but must be awarded based on qualifications. Some of the bigger firms have more manpower to market their firms. It is more costly to hire an out of town firm because per diem and travel have to be included, but how can that be avoided without changing the state law? **Rosevear** suggested a local preference point system that allots extra points to the local vendor. The City's local businesses need to be protected and time is of the essence.

Alan Jorgensen, 10372 S. Avenue 10½E, President of Venture Architects, expressed his concern over local preference. It is worth the time to evaluate the impact local preference will have on the growth of the community

Moore: This is not a matter of the City not supporting local preference. The ordinance adopted was an agreement with the Attorney General's Office as guidelines in applying local preference. One potential suggestion is that the City could move forward immediately to change the City Code in order to deal with the commodities between the \$2,500 and the \$50,000, and also move forward in contacting the Attorney General's Office to try and expedite the matter. At the same time, the City could look at a Charter provision to be submitted to the City Council by the end of December.

Mayor Nelson stated that Councilmember Nicholls has offered to lead a committee to begin discussions with the Attorney General's Office. Meetings could commence immediately and information can be brought back to City Council by the next meeting. **Moore** stated that if the City Council formally appoints a committee it would be bound by the Open Meeting Law. If a couple Councilmembers, less than a quorum, want to meet with members of the community to discuss the issue they are free to do so and report back to the Council. **Mayor Nelson** asked Nicholls to move forward with discussions and reminded staff that it was not an official appointment. The City Attorney or a representative will be available in the process.

VIII. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

Motion (Mayor Nelson/Mendoza): To appoint Mary Haynes to the Arts and Culture Commission with a term to expire November 12, 2012. Voice vote: **adopted** 7-0.

Motion (Mayor Nelson/Mendoza): To appoint Rogelia Torres and Emma Torres to the Census 2010 Complete Count Committee. Voice vote: **adopted** 7-0.

Motion (Mayor Nelson/Mendoza): To appoint Rose Gundy to the Clean and Beautiful Commission with a term to expire December 11, 2012. Voice vote: **adopted** 7-0.

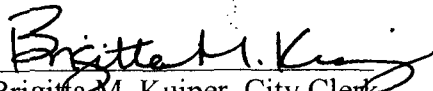
Johnson stated that he will not be in attendance at the next City Council meeting.

Mendoza asked Mayor Nelson or the City Administrator to extend an invitation to a representative of Yuma Private Industry Council (YPIC) to make a presentation at a worksession on the current job market in Yuma. **Mayor Nelson** suggested that the Councilmembers visit YPIC to see what they have to offer and how they are serving the community.

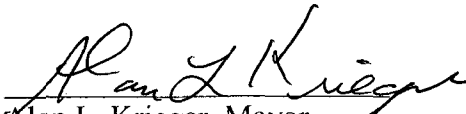
IX. SUMMARY OF CURRENT EVENTS - none

X. EXECUTIVE SESSION/ADJOURNMENT

Motion (Beeson/McClendon): To adjourn the meeting. Voice vote: **adopted** 7-0. The meeting adjourned at 7:46 p.m. No Executive Session was held.


Brigitta M. Kuiper, City Clerk

APPROVED:


Alan L. Krieger, Mayor

